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ALEXANDER L. STEVAS,
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No. 80-1348

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1980

STATE OF FLORIDA,
DEPARTMENT OF STATE,
Petitioner,

-vs-

TREASURE SALVORS, INC.,
ARMADA RESEARCH CORP.,
Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITIONER'S REPLY BRIEF

JIM SMITH
ATTORNEY GENERAL

SYDNEY H. MCKENZIE, III
CHIEF TRIAL COUNSEL
(Counsel of Record)

SUSAN E. GAMBLE
ASSISTANT ATTORNEY GENERAL

The Capitol - Suite 1501
Tallahassee, Florida 32301
Phone: 904/488-9935
Attorneys for Petitioner

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In their Brief in Opposition to the Petition for Writ of Certiorari, Respondents raise three points intended to circumvent the Eleventh Amendment's application to this case. The State of Florida

contends that the Eleventh Amendment's proscription is unequivocal and renders any judgment against a state by a district court void for want of subject matter jurisdiction.

Respondents first cite United States v. United Mine Workers, 330 U.S. 258 (1947) in support of the bootstrap jurisdiction principle, or that a court has "jurisdiction to determine its jurisdiction." That case upheld the power of a district court to hold a party in contempt for disobedience of an order directed to that party, even if the order violated was later set aside on appeal.

The Court emphasized, however, that this was so in situations "where. . . the subject matter of the suit, as well as the parties, was properly before the

Court" and "where the elements of federal jurisdiction were clearly shown." 330 U.S. at 294.[1] Mine Workers is not authority or justification--nor has it been cited as such--to defeat the purpose of the Eleventh Amendment.

Respondents' reliance on The Navemar, 303 U.S. 68 (1938) and In re Muir, 254 U.S. 522 (1921) is similarly misplaced and inapposite. These cases are solely concerned with the procedure which must be followed by a foreign government in

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[1]The case is most often cited in proceedings wherein a district court is held to have inherent injunctive powers to preserve the status quo pending a later determination as to its jurisdiction. See, e.g., Chicago and N.W. Ry. Co. v. United Transp. Union, 422 F.2d 979, 984-985 (7th Cir. 1970); Stewart v. Dunn, 363 F.2d 591 (5th Cir. 1966); c.f., United States v. Holland, 552 F.2d 667, 675 (5th Cir. 1977); United States v. Thompson, 319 F.2d 665, 667-668 (2d Cir. 1963); Fong Sik Leung v. Dulles, 226 F.2d 74, 78 (9th Cir. 1955).

asserting its sovereign immunity in United States courts and are thus patently inapplicable to suits in admiralty against a State. See, e.g., Southeastern Leasing Corp. v. Stern Dragger Belogorsk, 493 F.2d 1223 (1st Cir. 1974); Flota Maritima Browning de Cuba v. Motor Vessel Ciudad, 335 F.2d 619, 624 (4th Cir. 1964).

Finally, Respondents argue that Section 69.041, Florida Statutes (1979) declares that Florida has consented to suit in state or federal courts "in actions to foreclose liens or quiet title to property in which the state has or claims an interest." Brief in Opposition at 5-6; 9-10. Such an assertion reflects a misreading of the statute, which provides that the state may be sued in state

or federal courts "[f]or the foreclosure of a mortgage or other lien on real or personal property on which the state has or claims a mortgage or other lien." 69.041(b) (emphasis added). This has been interpreted to be a lien statute only,[2] and it is not a waiver of Florida's Eleventh Amendment immunity from suits filed in federal courts to recover property owned by the State.

It is fundamental that statutes waiving sovereign immunity are to be strictly construed. Edelman v. Jordan, 415 U.S. 651, 663 (1974). Furthermore, State Road Dept. v. Tharp, 1 So.2d 868 (Fla. 1949), quoted by Respondents to

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[2]Seaside Properties, Inc. v. State Rd. Dept., 121 So.2d 204 (3 DCA Fla. 1960).

defeat the State's claim of sovereign immunity here, has been restricted in that it has application only to contract actions for damages against the State Road Department (specifically provided for by statute) and/or eminent domain proceedings wherein compensation for the taking of property is at issue. See, Florida State Turnpike Authority v. Anhoco Corp., 116 So.2d 8, 15 (Fla. 1959).

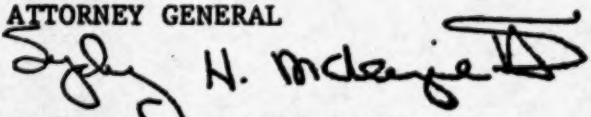
CONCLUSION

The decision by the Court of Appeals is in conflict with this Court's decision in In re New York, 256 U.S. 490 and 256 U.S. 503 (1921), as well as with Red Star Towing and Transportation Co. v. Department of Transportation, 423 F.2d 104 (3d Cir. 1970). No doctrine of jurisdic-

tional construction can apply to abrogate the clear mandate of the Eleventh Amendment. Accordingly, Certiorari should be granted under Rule 17.

Respectfully submitted,

JIM SMITH
ATTORNEY GENERAL



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